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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,752	04/15/2004	B. Thomas Barker	4002-1675/PC345.00	7045
<div>7590 10/15/2007 Woodard, Emhardt, Moriarty, McNett & Henry LLP Bank One Center/Tower Suite 3700 111 Monument Circle Indianapolis, IN 46204-5137</div>			<div>EXAMINER ARAJ, MICHAEL J</div> <div>ART UNIT 3733</div> <div>PAPER NUMBER</div>	
			<div>MAIL DATE 10/15/2007</div> <div>DELIVERY MODE PAPER</div>	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

CP

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/824,752	Applicant(s) BARKER, B. THOMAS	
	Examiner Michael J. Araj	Art Unit 3733	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 10-14.
Claim(s) objected to: 34, 37 and 39.
Claim(s) rejected: 1-9, 15-33, 35, 36 and 38.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.



EDWARD J. ROBERT
SUPERVISORY PATENT EXAMINER

Continuation of 3. NOTE: It is stated that claim 18 is not specifically rejected in the final action mailed on July 17, 2007. Though, the number claim 18 is not specifically written in the body of the rejection, it is rejected on the cover sheet. Additionally and more importantly, the subject matter of claim 18 is similar to that of claim 4 and 25 which had been previously specifically rejected. The only claim limitation that was missing was that the device needed to be made of shape memory material which is taught by Justis et al. (U.S. Patent No. 6,210,413). Therefore no new non-final action will be issued.

The 112 rejection with respect to claims 20 and 21 has been withdrawn in light of the submitted arguments.

Applicant argues that a nut is not a washer. Firstly, there is no structural difference in the claim differentiating from one name over the other. Secondly, the definition of a washer (from www.dictionary.com) is "a flat ring or perforated piece of leather rubber, et al., etc., used to give tightness to a joint to prevent leakage, to distribute pressure, etc. With respect to the interpretation of this definition a nut can be considered a washer.

Applicant argues that neither the nut nor the ball clamp of Brace "slide over" a body. As indicated in the interpretation above, the nut slides over or "above" the body. The threads of the nut are sliding with the threads of the upper part of the fastener (98). And the ball clamp is sliding with the conical section (96) of the fastener. These sliding mechanisms are happening "above" (or on top of) the body of the device, which is equivalent to the meaning of "over" the device.